IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003078
First-tier Tribunal No
HU/59587/2023
LH/01190/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 October 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MUHAMMAD SAAD ASHRAF
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr E Nicholson, Counsel, instructed by Lambeth Solicitors
For the Respondent: Ms C Newton, Senior Presenting Officer

Heard at Manchester on 8 October 2024

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of First-tier Tribunal Judge Raymond ('the Judge') dismissing his human rights (article 8) appeal. The decision was sent to the parties on 19 May 2024.

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Relevant Facts

2. The appellant is a national of Pakistan and is aged 35. He entered the United Kingdom with entry clearance as a Tier 4 (General) Student from 28 January 2011 to 15 October 2012. An in-time application for leave to remain as a Tier 4 (General) Student was refused on 4 January 2013.

3. On 22 June 2022, he applied for permission to remain on human rights (article 8 ECHR) grounds, relying upon his relationship with his wife, Mrs Bibi Niamut, a national of Mauritius. They were married at a registry office on 11 May 2015 and by Islamic ceremony on 30 May 2015.

4. The respondent refused the application by a decision dated 21 July 2023. She concluded that the appellant could not succeed on article 8 grounds under or outside the Immigration Rules.

5. At the time of application and decision Ms Niamut enjoys settled status. She is now a British citizen.

6. Twins were prematurely born to the couple on 1 October 2023. They are British citizens, as evidenced by copies of their passports placed in the appellant's bundle.

First-tier Tribunal Decision

7. The appeal came before the Judge sitting at Hatton Cross on 20 March 2024. The appellant was represented. He attended the hearing with his wife, and both were examined.

8. It is entirely unclear from the Judge's decision as to whether consideration was given to whether the birth of the children, and reliance upon their article 8 rights, was a new matter requiring consent from the respondent. I observe the guidance provided by *Mahmud (S. 85 NIAA 2002 – 'new matters')* [2017] UKUT 00488 (IAC) and *Quaidoo (new matter: procedure/process)* [2018] UKUT 00087(IAC). I note that the respondent was unrepresented at the hearing, which had been listed as a float.

9. The Judge's consideration of EX.1 and GEN.3.2 of Appendix FM to the Immigration Rules is limited to:

> '41. ... There are no exceptional features attaching to his relationship with his spouse since 2015 when they married, whether under EX.1, or under Article 8 by reference to GEN.3.2 ...
>
> ...
>
> 45. I find upon looking at the totality of the evidence, that whilst the family connection between [the appellant] and his spouse engages the low threshold at Article 8(1), in the light of EX.1 and GEN.3.2, because he falls outside the immigration rules. No disproportionate interference arises engaging Article 8(2) in applying the five *Razgar* principles ...'

10. I observe that [45] is subject to a lack of adequate proof reading, resulting in an absence of reasons in respect of the first sentence.

Grounds of Appeal

11. The appellant's grounds of appeal are not properly delineated into separate particularised complaints, identifying legal error by means of individually numbered grounds of challenge: *Nixon (permission to appeal: grounds)* [2014] UKUT 368 and *Harverye v Secretary of State for the Home Department* [2018] EWCA Civ 2848, at [55] – [58] (obiter). They are presented over seven pages, and it has been left to the Upper Tribunal to seek to identify the individual grounds that are advanced over 33 paragraphs.

12. In seeking to address the grounds as advanced, absent appropriate separate particularised complaint, Upper Tribunal Judge Blundell reasoned, *inter alia*, when granting permission to appeal by a decision sent to the parties on 23 August 2024:

> "1. The appellant is a Pakistani overstayer with a Mauritian wife and two British children. As I understand it, the children were British by birth because the appellant's wife was settled at the time. Judge Raymond dismissed the appellant's appeal on Article 8 ECHR grounds, finding that he was unable to meet the requirements of the Immigration Rules and that his removal would be proportionate under Article 8 ECHR.
>
> 2. It is arguable that both of these conclusions were vitiated by legal error. It is arguable that the Judge's conclusion that the appellant was unable to meet the Immigration Rules was reached without reference to paragraph EX.1. As contended in the grounds, the fact that the appellant's children are British required the Judge to consider whether it would be reasonable to expect them to leave the United Kingdom. Were that so, then the appellant was arguably able to meet the requirements for

> leave as a partner on the Ten Year Route. The same question arose as a result of s117B(6) of the Nationality, Immigration and Asylum Act 2002 but the Judge did not address his mind to that provision. Whilst that might have been on account of the lack of focus and clarity in the skeleton argument which was before the FtT, the fact remains that the Judge mentioned neither EX.1 nor s117B(6) and both provisions were arguably material to the assessment of this case.
>
> 3. Permission is therefore granted on the grounds which relate to the matters above ..."

13. Judge Blundell refused permission in respect of a judicial partiality, or bias, challenge, reasoning:

> "3. ... I can discern no basis whatsoever for the allegation that the Judge was 'partial' and that he had already 'set his mind to dismiss the appeal irrespective of the evidence'. Such serious allegations are not to be made lightly, whereas it seems in this case to be little more than an opening salvo in the overlong grounds ..."

14. Mr Nicholson informed me that on instruction reliance upon paragraph 3 of the grounds was withdrawn. I observe that permission to appeal was not granted by Judge Blundell in respect of this paragraph.

15. I agree with Judge Blundell that the grounds of appeal are overlong. The Upper Tribunal is an expert Tribunal and is not aided by lengthy references to, or regular reciting of passages from, well-known precedent authority. I note the joint observation of Lord Burnett of Maldon CJ, King LJ and Singh LJ in *R (Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605; [2021] 1 WLR 2326, at [120] that "excessively long documents conceal rather than illuminate the essence of the case being advanced" and "make the task of the court more difficult".

16. A second set of grounds of appeal challenging the decision of First-tier Tribunal Judge Saffer to refuse permission to appeal to this Tribunal was filed with the Upper Tribunal. There is a right of appeal to the Upper Tribunal, with the permission of the First-tier Tribunal or the Upper Tribunal, from decisions of the First-tier Tribunal which are not excluded decisions: section 11(1) and (2) of the Tribunals, Courts and Enforcement Act 2007. There is no right of appeal against a decision of the First-tier Tribunal to refuse permission to appeal to the Upper

Tribunal. An appeal against the substantive decision of the First-tier Tribunal can be renewed to the Upper Tribunal: rule 21(2) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The expectation is that a renewed application will address the grounds relied upon, which can be amended from those upon which permission to appeal was previously refused, with an accompanying short explanation as to why the First-tier Tribunal erred in not granting permission.

17. I proceed, as encouraged by Mr Nicholson, on the basis that the second document simply seeks to aid the Upper Tribunal by addressing Judge Saffer's reasoning and no more.

18. The respondent did not file a rule 24 response.

Discussion

19. At the outset of the hearing Ms Newton accepted that the Judge's decision was subject to material error of law and was properly to be set aside in its entirety. Understandably, Mr Nicholson agreed.

20. The respondent's position was that she had not consented to the new matter concerning the article 8 rights of the children, but that she would be willing to undertake consideration of this issue consequent to the Judge's decision being set aside.

21. There was discussion as to whether the respondent had agreed to the new matter by her review of the appellant's undated skeleton argument. I consider the skeleton argument to be a singularly unhelpful document. It is neither skeletal, nor does it succinctly identify the principle controversial issues. It does not have the focus envisaged by the guidance in *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 (IAC); [2023] Imm AR 1416. Several pages address well-known judicial authority in general terms, with an attendant failure to clearly identifying the core issues in a manner that would aid a judge considering the appeal at first instance. It relies heavily on the children without engaging as to whether a new matter is raised. A fair reading of the review is that the respondent engages with the skeleton argument, including addressing EX.1 which appears not to be expressly referenced in the skeleton argument, but there is no express reference to consent being granted to the Upper Tribunal to consider the article 8 rights of the children if such rights are properly to be considered a new matter. I have sympathy for the Judge seeking to

engage with the lack of clarity provided by both the skeleton argument and the review.

22. In any event, Mr Nicholson confirmed that the appellant wishes to file updated evidence as to the health of his young children, and this evidence can properly be considered by the respondent when assessing the issue of whether consent is required. Ms Newton noted that the appellant is the father of two British citizen children, who were born premature and have just turned one.

Resumed Hearing

23. I observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 0046 (IAC). The representatives requested that this matter be remitted to the First-tier Tribunal. I agree to remittal. The First-tier Tribunal should properly have the initial opportunity to consider the new matter, if the respondent consents. Additionally, to date, the appellant has had no adequate judicial consideration of his human rights appeal.

24. I direct:

    i. The appellant is to file and serve any new evidence to be relied upon, if so advised, **no later than 4pm on Friday 22 November 2024**.

    ii. The respondent is to confirm her position as to the issue of consent in respect of grounds arising from the birth of the children, if considered to be a new matter, to the appellant and to the First-tier Tribunal **no later than 4pm on Friday 6 December 2024**.

    iii. The parties have liberty to apply to the First-tier Tribunal to vary these directions.

25. The listing of this matter is properly a matter for the First-tier Tribunal. However, I consider it appropriate to observe that both Mr Nicholson and Ms Newton hold the view that an initial case management review hearing would be beneficial and noting the particular facts arising in this matter I agree. However, listing is ultimately a matter for the First-tier Tribunal.

Decision

26. The decision of the First-tier Tribunal sent to the parties on 19 May 2024 is set aside in its entirety.

27. The matter is remitted to the First-tier Tribunal at Hatton Cross to be heard by any judge other than First-tier Tribunal Judge Raymond.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 October 2024